



September 28, 1999

Mr. Darrell G-M Noga  
Cooper & Scully  
Founders Square  
900 Jackson Street, Suite 100  
Dallas, Texas 75202

OR99-2745

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128302.

The City of Coppell (the "city"), which you represent, received a request for information from the personnel file of Detective Scott Peters. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed a representative sample of the documents at issue.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 protects information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

For information to be protected from public disclosure by the common-law right to privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person, and (2) it is not of legitimate concern to the public. *Id.* at 685. We have consistently held that personal financial information not related to a financial transaction between an individual and a governmental body is protected by the common-law right to privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). Documents #3 through #6 (see numbers in bottom right hand corner of documents) contain personal financial information not related to a financial transaction between Detective Peters and the city. These documents are therefore excepted from disclosure under sections 552.101 and 552.102 and must be withheld from the requestor.

Document #2 is a W-4 form. Prior decisions of this office have held that title 26, section 6103(a) of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Generally, any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code is confidential. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.C. 1984). Thus, the city must withhold document #2 from disclosure under section 552.101 as information deemed confidential by federal statute.

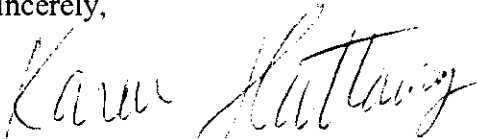
The only other document at issue is document #1, a letter from a Dallas County Assistant District Attorney. You contend that this document is excepted from disclosure under section 552.103 of the Government Code. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under 552.103(a). You have demonstrated that document #1 is related to pending civil litigation “filed in the 116<sup>th</sup> Judicial District Court, Dallas County, Texas No. DV98-06596.” Therefore, the city may withhold document #1 from disclosure pursuant to section 552.103.<sup>2</sup>

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<sup>2</sup>In reaching this conclusion, however, we assume that the opposing party in the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because we are able to resolve this matter under sections 552.101, 552.102, and 552.103, we do not address your additional arguments against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 128302

Encl. Submitted documents

cc: Ms. Darlene McCall  
728 Hurstview Drive  
Hurst, Texas 76053  
(w/o enclosures)